

1 Anchun Jean Su (DC Bar No. CA285167)
2 Howard M. Crystal (DC Bar No. 446189)
3 Center for Biological Diversity
4 1411 K Street NW, Suite 1300
5 Washington, DC 20005
6 Tel: (202) 849-8399
7 Emails: jsu@biologicaldiversity.org
8 hcrystal@biologicaldiversity.org
9 *Admitted Pro Hac Vice*

7 Tala DiBenedetto (NY Bar No. 5836994)
8 P.O. Box 371
9 Oceanside, NY 11572-0371
10 Tel: (718) 874-6734, ext. 555
11 Email: tdibenedetto@biologicaldiversity.org
12 *Admitted Pro Hac Vice*
13 *Attorneys for Plaintiffs*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**
15 **TUCSON DIVISION**

16 Center for Biological Diversity; and
17 Conservation CATalyst,

18 *Plaintiffs,*

19 v.

20 Kristi Noem, in her official capacity
21 as Secretary of Homeland Security;
22 U.S. Department of Homeland
23 Security; and U.S. Customs and
24 Border Protection,

25 *Defendants.*

Case No. CV-25-00365-TUC-AMM (JEM)

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO
CONTINUE STAY**

1 Thirty days have passed since this Court granted Defendants’ initial Motion for a
2 Stay (ECF No. 26). During that time, new border construction activities appear to have
3 taken place in ecologically important species habitat in the San Rafael Valley, causing
4 Plaintiffs ongoing irreversible harm. Because (1) Defendants have not met their burden to
5 demonstrate why a further stay of this case is necessary or appropriate, particularly since
6 this Court and other courts have directed DOJ staff to continue to work during the
7 Congressional appropriations lapse; (2) Plaintiffs have been, and will continue to be,
8 harmed by a stay while Defendants continue to engage in the underlying harmful activities
9 at issue in this litigation; and (3) resolving this case without further undue delay would
10 best serve judicial economy, this Court should deny Defendants’ Motion to Continue the
11 Stay (ECF No. 27). *See DeMartini v. Johns*, 693 Fed. Appx. 534, 538 (9th Cir. 2017)
12 (noting that the party moving for a stay has the burden to “make out a clear case of
13 hardship or inequity in being required to go forward,” and the court must weigh the
14 competing interests at stake in granting or denying the stay) (citation and internal
15 quotation marks omitted).

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17 Defendants have not met their burden of showing that a further stay in this case is
18 warranted or necessary given the lapse in Congressional appropriations. Defendants again
19 rely solely on the broad language of the Antideficiency Act, 31 U.S.C. § 1342, which does
20 not require the Court to stay this case (ECF No. 27, ¶ 2). Since Defendants moved for the
21 initial stay of proceedings, courts—including this Court—have denied motions for a stay
22 in light of the lapse in appropriations, finding that the Antideficiency Act and DOJ’s own
23 FY 2026 Contingency Plan authorize DOJ attorneys to work to comply with existing
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1 scheduling deadlines. *See, e.g.*, Order Den. Mot. for Stay, *Center for Biological Diversity*
 2 *et al. v. United States Forest Service et al.*, ECF No. 30, at 1-2, No. 4:24-cv-00405-RM
 3 (D. Ariz. Oct. 20, 2025) (citing *Lehman v. U.S. Dept. of Lab.*, No. 25-11846, 2025 WL
 4 2808472, at *1 (E.D. Mich. Oct. 2, 2025); *In re Camp Lejeune Water Litig.*, No. 7:23-CV-
 5 897, 2025 WL 2827029, at *2 (E.D.N.C. Oct. 6, 2025); *People for the Ethical Treatment*
 6 *of Animals v. U.S. Dep't of Agric.*, 912 F.3d 641, 641 (D.C. Cir. 2019) (Katsas, J.,
 7 concurring)); Order Den. Mot. for Stay, *Center for Biological Diversity et al. v. U.S.*
 8 *Bureau of Land Mgmt. et al.*, ECF No. 39, at 1-2, No. 4:24-cv-00141-RM (D. Ariz. Oct.
 9 16, 2025) (same). Additionally, Defendants would not be substantially prejudiced if this
 10 litigation were to move forward, as the lapse in appropriations occurred a mere two days
 11 before Defendants' deadline for their reply brief in this case (ECF No. 23, ¶ 3).

14 Further, the balance of harms has increasingly shifted against any further stay in
 15 this case, as border construction activities in the San Rafael Valley have continued during
 16 the pendency of the stay, causing Plaintiffs ongoing and irreversible harm. Since the end
 17 of September, additional border wall appears to have been erected in the San Rafael
 18 Valley. *See* Russell McSpadden Decl., ¶¶ 4-8. Construction activities appear to include,
 19 *inter alia*, the use of explosives in ecologically sensitive areas serving as important
 20 wildlife habitat. *Id.* ¶¶ 5-8. This destruction of precious, irreplaceable habitat and corridors
 21 is precisely the harm Plaintiffs are seeking to address through this litigation and
 22 underscores the need for the expedited briefing agreed to in this case (ECF No. 11 at 10
 23 n.2; ECF No. 1, ¶¶ 14-23). *See also*, *Nevada v. United States*, 2019 U.S. Dist. LEXIS
 24 234506, at *3-4 (D. Nev. Jan. 2, 2019) (denying motion to stay due to lack of
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1 appropriations “in light of the alleged irreparable harm and the government’s refusal to
 2 assure that it will not proceed with the asserted harmful conduct” (shipment of plutonium)
 3 before resolution of motion for preliminary injunction).

4 Further, while this case was stayed, on October 15, 2025, as part of a series of new
 5 waivers, the Department of Homeland Security issued a new determination pursuant to
 6 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”)
 7 Section 102(c) waiving laws and regulations related to contracting and procurement “[i]n
 8 order to ensure the expeditious construction of the barriers and roads in the Tucson
 9 Sector.” Determination Pursuant to Section 102 of the Illegal Immigration Reform and
 10 Immigrant Responsibility Act of 1996, as Amended, 90 Fed. Reg. 48281 (Oct. 15, 2025).¹
 11 In light of this new waiver issued pursuant to IIRIRA in order to expedite border wall
 12 construction in the Tucson Sector, and because counsel for Defendants have not responded
 13 to Plaintiffs’ inquiries regarding whether the waivers would impact the timing of border
 14 wall construction in the San Rafael Valley, it is imperative that this case be resolved
 15 expeditiously to avoid further prejudice to Plaintiffs from ongoing border construction.²

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 20 ¹ The DHS Secretary issued nine identical waivers on the same day that apply to all nine
 21 U.S. Border Patrol sectors along the 2,000-mile-long U.S.-Mexico border. *See* 90 Fed.
 22 Reg. 48281 (Oct. 15, 2025) (Tucson, Arizona Sector); 90 Fed. Reg. 48282 (Oct. 15, 2025)
 23 (El Centro, California Sector); 90 Fed. Reg. 48283 (Oct. 15, 2025) (Del Rio, Texas
 24 Sector); 90 Fed. Reg. 48284 (Oct. 15, 2025) (Rio Grande Valley, Texas Sector); 90 Fed.
 25 Reg. 48285 (Oct. 15, 2025) (Yuma, Arizona Sector); 90 Fed. Reg. 48286 (Oct. 15, 2025)
 26 (Big Bend, Texas Sector); 90 Fed. Reg. 48287 (Oct. 15, 2025) (Laredo, Texas Sector); 90
 27 Fed. Reg. 48288 (Oct. 15, 2025) (El Paso, New Mexico and Texas Sector); 90 Fed. Reg.
 28 48288 (Oct. 15, 2025) (San Diego, California Sector).

² Indeed, it has become clear that during the shutdown, the federal government is
 continuing to pursue all kinds of immigration-related activities at the same time it is asking
 to be relieved of any obligation to defend projects like the one at issue here. For example,
 the U.S. Customs and Border Protection (“CBP”) is now operating in Chicago, Illinois.
Alex Welch, *JB Pritzker Warns Rachel Maddow Trump Wants Americans to ‘Get Used*

Finally, allowing this litigation to proceed would promote judicial economy. Over a month has passed since Defendants moved for a stay in this case (ECF No. 23), and Defendants once again seek an indefinite stay, one that can last for an unknown length of time—the pendency of the government shutdown (ECF No. 27, ¶ 4). Extending a stay of this litigation for a currently unknown period would further prejudice Plaintiffs and undermine the judicial economy benefits of the expedited briefing sought in this case. *See Native Songbird Care & Conservation v. Foxx*, 2013 U.S. Dist. LEXIS 147828, at *3 n.3 (N.D. Cal. Oct. 11, 2013) (“Given the fact that time is of the essence in this case, and the fact that an indefinite stay could potentially prejudice Plaintiffs, the Court will not stay this case because of the lapse of appropriations.”). Accordingly, Plaintiffs respectfully request that this Court deny Defendants’ Motion to Continue the Stay.

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Respectfully submitted,

/s/ Tala Dibenedetto

TALA DIBENEDETTO (NY Bar No. 5836994)

CENTER FOR BIOLOGICAL DIVERSITY

P.O. Box 371

Oceanside, NY 11572-037

Telephone: (718) 874-6734, ext. 555

to the Idea’ of Military Troops on Their Streets, Yahoo News (October 7, 2025), https://ca.news.yahoo.com/jb-pritzker-warns-rachel-maddow-165130020.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLnNvbS8&guce_referrer_sig=AQAAAJyyIE1TD7E3UrNzGBO_FrXZthQ7Hw0xadBBY60lvFwgP6w-B1rULieXxHjGdwwXpGAob4-II-Cm7ofVKlZKWb6H9BQUDCeZJSeY. Moreover, it bears noting that Chicago is hundreds of miles from any U.S. border, further undermining any notion that Defendants’ authority under IIRIRA § 102(a) is adequately constrained because DHS can only act within 100 miles of U.S. borders (ECF No. 11-3, ¶ 12).

Email: tdibenedetto@biologicaldiversity.org
Admitted Pro Hac Vice

ANCHUN JEAN SU (DC Bar No. CA285167)
HOWARD M. CRYSTAL (DC Bar No.
446189)
CENTER FOR BIOLOGICAL DIVERSITY
1411 K Street N.W., Suite 1300
Washington, D.C. 20005
Telephone: (202) 849-8399
Emails: jsu@biologicaldiversity.org
hcrystal@biologicaldiversity.org
Admitted Pro Hac Vice

Attorneys for Plaintiffs